IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

Crl.MC.No. 2319 of 2007()

C.C.NO.774/04 ON THE FILE OF JUDICIAL MAGISTRATE OF THE FIRST CLASS, KOYILANDY.

PETITIONER:

SABU, S/O.SADANANDAN, PUNNAPRA VELIYIL, KALATHU, AVALOOKUNNU POST, ALAPPUZHA.

BY ADV. SMT.T.D.RAJALAKSHMI
SRI.R.SREEHARI

RESPONDENTS:

STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 19/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. NO. 2319 OF 2007

Dated this the 19th day of July, 2007

ORDER

There is no representation for the petitioner. The petitioner faces indictment in a prosecution under Sec.304-A of the IPC. Cognizance has been taken on the basis of a final report submitted by the police. The petitioner did not appear before the learned Magistrate. Consequently, treating him as an absconding accused, the learned Magistrate has issued a non-bailable warrant of arrest to procure the presence of the petitioner. The petitioner has, in these circumstances, come to this Court with a prayer to invoke the powers under Sec.482 of the Cr.P.C.

2. According to the petitioner, he is innocent. The non-appearance was not wilful. It was due to reasons beyond the control of the petitioner. No summons was served on the petitioner. The petitioner is willing to appear before the

learned Magistrate and co-operate with the court for the expeditious disposal of the case. But the petitioner apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously.

2. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

4. In the result, this Crl.M.C. is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail after giving sufficient prior notice to

the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge